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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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MAR 21 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Rulemaking to Amend Parts 1, 2, 21 and 25 )  
of the Commissions Rules to Redesignate )  
the 27.5-29.5 GHz Frequency Band, to )  
Reallocate the 29.5-30.0 GHz Frequency )  
Band, to Establish Rules and Policies for )  
Local Multipoint Distribution Service and for )  
Fixed Satellite Services )

and )

Suite 12 Group Petition for Pioneer's )  
Preference )

CC Docket No. 92-297

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PP-22

**REPLY**

QUALCOMM, Incorporated ("QUALCOMM"), by its attorneys, hereby  
replies to the Opposition of Teledesic Corporation ("Teledesic") to QUALCOMM's  
Petition for Supplemental Comments in the above-captioned proceeding ("Petition").

**I. BACKGROUND**

The QUALCOMM Petition requested the Commission to solicit additional  
comment on sharing, technical viability and spectrum efficiency among Non-  
Geostationary Orbit Satellite Systems in the Fixed Satellite Service ("NGSO/FSS") in

response to the Third Notice of Proposed Rulemaking in Docket 92-297.<sup>1</sup> In its Petition QUALCOMM specifically stated that

This action need not delay the interservice Ka  
Band segmentation plan.<sup>2</sup>

QUALCOMM also gave its reasons for requesting additional comment on NGSO/FSS:

The results of WRC-95 require that sharing  
issues be given a high priority.<sup>3</sup>

and

The existing record does not provide sufficient  
analysis to assure that opportunities for  
competition will be preserved.<sup>4</sup>

QUALCOMM requested that sharing studies be included within Docket 92-297 because that proceeding would include development of licensing policies and service rules. Important to that development should be an understanding of technical viability and spectrum efficiency issues which will be discussed in comments relating to sharing.

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<sup>1</sup> Rulemaking to Amend Parts 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellites, Third Notice of Proposed Rulemaking, CC Docket No. 92-297, FCC 95-287, July 28, 1995 ("Third NPRM").

<sup>2</sup> Petition, p.2.

<sup>3</sup> Petition, p.8. The World Radiocommunications Conference, held in Geneva in the fall of 1995 ("WRC-95") and sponsored by the International Telecommunications Union ("ITU"), tentatively addressed NGSO/FSS spectrum issues. It is hoped that spectrum allocations will be finalized at the World Radiocommunications Conference to be held in 1997 ("WRC-97").

<sup>4</sup> Id.

## II. TELEDESIC OPPOSITION

In its Opposition to the Petition, Teledesic claims that QUALCOMM's sole argument for requesting additional comment on sharing is the "baseless" assumption that commenters did not expect a designation of spectrum for NGSO/FSS systems to be made at WRC-95.<sup>5</sup> Teledesic also accuses QUALCOMM of attempting to delay the Ka Band segmentation plan and suggests that the "credibility" of the United States will suffer if a domestic band plan is not adopted.<sup>6</sup> Almost as an afterthought, Teledesic also argues that it is not necessary for the FCC to consider sharing in the domestic band plan for NGSO/FSS.<sup>7</sup>

## III. REPLY

Nine of ten pages of the Opposition deal with irrelevant and misleading issues. First, with regard to the band segmentation plan, QUALCOMM views adoption of the "band segmentation plan" -- the segmenting of 2500 MHz of spectrum

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<sup>5</sup> See Opposition, p.1, pps. 3-6.

<sup>6</sup> See Opposition, p.2, pps. 8-10.

<sup>7</sup> See Opposition, pps. 7-8. Teledesic also claims that there is no legal basis to reopen the comment round and claims that no precedent or rule explicitly provides for the FCC to take such action. Teledesic is clearly wrong. The rule section to which Teledesic points for support, regarding comments and replies in rulemaking proceedings, Section 1.415(d), provides for additional comments if requested by the Commission. The QUALCOMM Petition simply asks that the Commission request such comments. No waiver of Section 1.415(d) is required because the QUALCOMM Petition is completely consistent with the rule. Moreover, there is ample precedent for reopening the comment round in rulemaking proceedings, particularly to solicit comment on limited, focused issues, and particularly in light of new developments or changed circumstances. For example, the Commission recently solicited additional comment in CC Docket No. 95-116, Telephone Number Portability, in light of the passage of the Telecommunications Act of 1996. See Public Notice DA 96-358, March 14, 1996. Furthermore, the Commission has relied on a company's failure to seek to reopen the record for comment for denial of relief. See National Exchange Carrier Association, Inc., FCC 85-387, July 31, 1985. ("MCI could have petitioned to reopen the record so that it could comment on these figures."). QUALCOMM does not doubt that the Commission has the discretion to order its own proceedings, including soliciting additional comments. We are not arguing that the Commission is under a legal compulsion to do so. We do believe that our international commitments create a moral compulsion to do so.

among Local Multipoint Distribution Service (LMDS), Mobile Satellite Service (MSS), Geostationary Fixed Satellite Service (GSO/FSS) and NGSO/FSS -- to be distinct from issues of sharing within the 500 MHz designated for use by NGSO/FSS systems. QUALCOMM's Petition clearly stated that the solicitation of comments on NGSO/FSS sharing need not delay adoption of the plan. Either Teledesic is deliberately misreading the Petition or it construes QUALCOMM's request that no action be taken that would preclude the possibility of sharing (between two NGSO/FSS systems)<sup>8</sup> to mean that the band segmentation plan cannot be adopted because it precludes sharing. If the latter, then Teledesic, in the context of supplemental comments, should be given an opportunity to explain why sharing between two NGSO/FSS systems is incompatible with the 500 MHz designation of the band segmentation plan and how the United States can meet its international obligations if it is incompatible.<sup>9</sup>

Second, with regard to Commenter's expectations at WRC-95, the issue is not what occurred before WRC-95, but what must occur after. Not once in its Opposition does Teledesic even mention the Plenary Resolution of WRC-95 which forms the true basis of QUALCOMM's request. That Resolution urged that "technical, sharing and regulatory issues should be studied."<sup>10</sup> QUALCOMM's Petition merely requests that the United States make a good faith effort to support the International Telecommunications Union by seriously studying sharing criteria among NGSO/FSS systems, to be sure that the U.S. adopts service rules and licensing policies that are viable in the international marketplace and consistent with ITU Resolutions.

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<sup>8</sup> See Petition, f. 14.

<sup>9</sup> In its Comments in response to the Third NPRM, Teledesic stated that "co-frequency sharing among systems is not possible". Comments of Teledesic Corporation, September 7, 1995, n.8. This is an important conclusion that may have a significant impact on WRC-97. The Commission can only benefit from an amplification of this view, with which QUALCOMM does not agree.

<sup>10</sup> Res PLEN-1, Final Acts of the World Radiocommunication Conference. Geneva, 1995, p.267.

Apparently Teledesic thinks U.S. credibility will suffer if we study sharing.

QUALCOMM believes credibility will suffer if we don't.

In the only relevant argument Teledesic makes, it claims that

Since Teledesic is the only cut-off  
NGSO/FSS applicant for domestic use of the  
28 GHz band, the issue of intra-service  
sharing among NGSO/FSS applicants has  
been mooted.<sup>11</sup>

In this statement Teledesic appears to be suggesting that the United States can ignore Res PLEN-1 because Teledesic will not be required to share spectrum with other U.S. NGSO/FSS systems. Whatever protection from NGSO/FSS competition Teledesic may hope to enjoy in the U.S., it seems likely that other countries will propose NGSO/FSS systems. It is absolutely essential that it be clearly understood how Teledesic can share spectrum with those systems.<sup>12</sup> That is, QUALCOMM believes, the thrust of Res PLEN-1 -- to recognize that NGSO systems are by their nature global systems. To ignore Res PLEN-1, as Teledesic has done, would cause far more damage to U.S. credibility than any delay in adopting the band segmentation plan.<sup>13</sup>

This is particularly true if the studies reveal that sharing is possible and desirable. As pointed out in our Petition, QUALCOMM believes that multiple access

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<sup>11</sup> Opposition, p.7.

<sup>12</sup> It should be noted that the FCC's NGSO/MSS frequency plan, which accommodates multiple systems, is being carefully studied by other administrations because it permits sharing.

<sup>13</sup> Almost as an aside, Teledesic allows for studies of sharing to be done in the Industry Advisory Committee preparing for WRC-97. Teledesic can be assured that QUALCOMM will push for studies of sharing in every forum, but we believe that inclusion of such information is most appropriate in Docket 92-297 since the Commission first included sharing criteria in this Docket. See Third NPRM, para. 127. Moreover the technical standards and service rules for NGSO/FSS will be adopted in this proceeding. Those standards and rules may well be affected by the outcome of sharing studies, technical viability analyses and spectrum efficiency standards.

techniques and constellation geometries may be used to improve the potential for co-frequency sharing within 500 MHz. Because of this belief we are most anxious to explore the basis of the Commission's "preliminary technical analysis" that 500 MHz is the minimum amount necessary to implement a viable NGSO/FSS system.<sup>14</sup> Given the global nature of NGSO/FSS systems and given the objectives of Res-PLN-1, it is essential that all possibilities for sharing that 500 MHz must be explored. If we can demonstrate that two or more global systems can be accommodated, a major step toward satisfying the spirit of Res PLN-1 will have been taken. Certainly the Commission seeks that result and should solicit additional comment in this proceeding. It is not prudent to divorce the current proceedings before the FCC regarding NGSO/FSS from WRC-95's Resolution PLN-1 and the U.S. Preparations for WRC-97. There is a need for consistency in and therefore advisable to utilize identical information and analyses in the Commission's Proceedings and U.S. Preparation for WRC-97.

#### IV. **CONCLUSION**

QUALCOMM believes that Teledesic's Opposition focuses on the wrong issues. The simple facts are these: First, WRC-95 placed an obligation on the United States to make a good faith effort to consider sharing. Second, sharing studies need not delay the band segmentation plan. Third, sharing studies may show that it is feasible for more than one NGSO/FSS system to share the allocated spectrum to offer global service. Fourth, given that more than one NGSO/FSS system is likely, sharing studies will result in more realistic and viable service rules and licensing policies.

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<sup>14</sup> Third NPRM, para. 145.

In these circumstances, and weighing the benefits and detriments of soliciting additional comment, it is clear that much can be gained by reopening the comment period for the limited purpose of considering sharing among NGSO/FSS systems.

Respectfully submitted,

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March 21, 1996

## **CERTIFICATE OF SERVICE**

I, Gail M. Mullen, do hereby certify that a copy of the foregoing Reply of the QUALCOMM, Incorporated, was sent by first class United States mail, postage prepaid, or by hand delivery or facsimile where indicated by an asterisk (\*), this 21st day of March, 1996, to the following:

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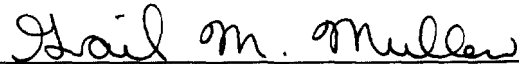
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